



FACT SHEET: The Stream Protection Rule Protects Clean Water and Public Health

- *Repealing the stream protection rule could effectively exempt mountaintop coal mining from modern regulation indefinitely*
- *Without this update to a more than 30-year-old rule, communities are at risk of pollution that endangers clean water and public health*

Passing this CRA Could Effectively Stop New Rules Protecting Streams from Mountaintop Mining

The CRA could stop agencies from doing their jobs. Under the CRA, an agency cannot issue any future regulations “substantially the same” as the repealed regulation unless Congress passes a new law. This could effectively tie the hands of the Office of Surface Mining Reclamation and Enforcement (OSMRE) in any matters relating to the regulation of mountaintop mining and the impacts of coal on watersheds more generally. [[5 U.S.C. § 801](#)]

- **An analysis in the Washington Law Review argues that it is “conceivable that any subsequent attempt to regulate in any way whatsoever in the same broad topical area would be barred” under the “substantially similar” language.** [Washington College of Law, [2011](#)]
- **The “substantially similar” language is vague and undefined, and a violation “may be a matter for Congress alone to decide.”** Because the CRA prohibits judicial review, Congress could be the only ones with authority to make the distinction. [CRS, [11/17/16](#)]

This Rule Protects Clean Water

Mountaintop mining has damaged 2,000 miles of streams in Appalachia and been linked to serious health problems, including cancer. A 2008 study found that 93% of streams downstream of surface mining operations in Appalachia were impaired based on measurements of aquatic life. [Journal of the North American Benthological Society, [9/08](#)]

The new rule establishes important clean water protections. The new rule establishes a long-overdue monitoring requirement for water pollution and prevents dewatering of streams. Toxic pollutants including lead, arsenic, and selenium, known to cause birth defects and other severe human health impacts, must be monitored under the rule. These protections complement the broader protections the Clean Water Act applies to all streams. [[81 FR 93066, 816.42, OSMRE](#)]

New rule will restore thousands of miles of streams. Once fully implemented, the rule will require restoration of approximately 6,000 miles of streams damaged or destroyed by mountaintop mining. [\[OSMRE\]](#)

The Stream Protection Rule Is Cost Effective

The rule is cost effective. According to OSMRE, total annual compliance costs for the coal industry are minimal, approximately 0.3% of an estimated \$31.2 billion in estimated 2015 industry revenues. [\[OSMRE\]](#)

The costs of doing nothing are borne by small businesses. Businesses like restaurants, farms, breweries, and the outdoor recreation industry rely on clean water and are jeopardized by coal contamination in streams. [Earthjustice, [1/26/17](#)]

The Rule Updates an Out-of-Date Regulation

Current water pollution regulations for coal mining are over 30 years old. Scientific understanding of the impacts of coal mining on water quality and public health has advanced significantly since the current stream buffer zone rule was finalized in 1983. Numerous peer-reviewed studies have found negative impacts from mining not addressed by current regulations. [\[OSMRE\]](#)

New rule replaces a vacated Bush Administration rule. A 2008 rule finalized by the Bush Administration was vacated in federal court in 2014 for failure to consult with agency experts on the impacts of coal mining on fish and wildlife. [\[81 FR 93066\]](#)